

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 416 be amended to read as follows:

- 1 Page 18, between lines 28 and 29, begin a new paragraph and insert:
- 2 "SECTION 15. IC 27-4-1-4 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The following are
- 4 hereby defined as unfair methods of competition and unfair and
- 5 deceptive acts and practices in the business of insurance:
- 6 (1) Making, issuing, circulating, or causing to be made, issued, or
- 7 circulated, any estimate, illustration, circular, or statement:
- 8 (A) misrepresenting the terms of any policy issued or to be
- 9 issued or the benefits or advantages promised thereby or the
- 10 dividends or share of the surplus to be received thereon;
- 11 (B) making any false or misleading statement as to the
- 12 dividends or share of surplus previously paid on similar
- 13 policies;
- 14 (C) making any misleading representation or any
- 15 misrepresentation as to the financial condition of any insurer,
- 16 or as to the legal reserve system upon which any life insurer
- 17 operates;
- 18 (D) using any name or title of any policy or class of policies
- 19 misrepresenting the true nature thereof; or
- 20 (E) making any misrepresentation to any policyholder insured
- 21 in any company for the purpose of inducing or tending to
- 22 induce such policyholder to lapse, forfeit, or surrender the
- 23 policyholder's insurance.
- 24 (2) Making, publishing, disseminating, circulating, or placing
- 25 before the public, or causing, directly or indirectly, to be made,

published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of

1 conducting the business, or any other relevant factor.

2 (B) Unfair discrimination between individuals of the same

3 class involving essentially the same hazards in the amount of

4 premium, policy fees, assessments, or rates charged or made

5 for any policy or contract of accident or health insurance or in

6 the benefits payable thereunder, or in any of the terms or

7 conditions of such contract, or in any other manner whatever;

8 however, in determining the class, consideration may be given

9 to the nature of the risk, the plan of insurance, the actual or

10 expected expense of conducting the business, or any other

11 relevant factor.

12 (C) Excessive or inadequate charges for premiums, policy fees,

13 assessments, or rates, or making or permitting any unfair

14 discrimination between persons of the same class involving

15 essentially the same hazards, in the amount of premiums,

16 policy fees, assessments, or rates charged or made for:

17 (i) policies or contracts of reinsurance or joint reinsurance,

18 or abstract and title insurance;

19 (ii) policies or contracts of insurance against loss or damage

20 to aircraft, or against liability arising out of the ownership,

21 maintenance, or use of any aircraft, or of vessels or craft,

22 their cargoes, marine builders' risks, marine protection and

23 indemnity, or other risks commonly insured under marine, as

24 distinguished from inland marine, insurance; or

25 (iii) policies or contracts of any other kind or kinds of

26 insurance whatsoever.

27 However, nothing contained in clause (C) shall be construed to

28 apply to any of the kinds of insurance referred to in clauses (A)

29 and (B) nor to reinsurance in relation to such kinds of insurance.

30 Nothing in clause (A), (B), or (C) shall be construed as making or

31 permitting any excessive, inadequate, or unfairly discriminatory

32 charge or rate or any charge or rate determined by the department

33 or commissioner to meet the requirements of any other insurance

34 rate regulatory law of this state.

35 (8) Except as otherwise expressly provided by law, knowingly

36 permitting or offering to make or making any contract or policy

37 of insurance of any kind or kinds whatsoever, including but not in

38 limitation, life annuities, or agreement as to such contract or

39 policy other than as plainly expressed in such contract or policy

40 issued thereon, or paying or allowing, or giving or offering to pay,

41 allow, or give, directly or indirectly, as inducement to such

42 insurance, or annuity, any rebate of premiums payable on the

43 contract, or any special favor or advantage in the dividends,

44 savings, or other benefits thereon, or any valuable consideration

45 or inducement whatever not specified in the contract or policy; or

46 giving, or selling, or purchasing or offering to give, sell, or

47 purchase as inducement to such insurance or annuity or in

1 connection therewith, any stocks, bonds, or other securities of any
2 insurance company or other corporation, association, limited
3 liability company, or partnership, or any dividends, savings, or
4 profits accrued thereon, or anything of value whatsoever not
5 specified in the contract. Nothing in this subdivision and
6 subdivision (7) shall be construed as including within the
7 definition of discrimination or rebates any of the following
8 practices:

9 (A) Paying bonuses to policyholders or otherwise abating their
10 premiums in whole or in part out of surplus accumulated from
11 nonparticipating insurance, so long as any such bonuses or
12 abatement of premiums are fair and equitable to policyholders
13 and for the best interests of the company and its policyholders.

14 (B) In the case of life insurance policies issued on the
15 industrial debit plan, making allowance to policyholders who
16 have continuously for a specified period made premium
17 payments directly to an office of the insurer in an amount
18 which fairly represents the saving in collection expense.

19 (C) Readjustment of the rate of premium for a group insurance
20 policy based on the loss or expense experience thereunder, at
21 the end of the first year or of any subsequent year of insurance
22 thereunder, which may be made retroactive only for such
23 policy year.

24 (D) Paying by an insurer or insurance producer thereof duly
25 licensed as such under the laws of this state of money,
26 commission, or brokerage, or giving or allowing by an insurer
27 or such licensed insurance producer thereof anything of value,
28 for or on account of the solicitation or negotiation of policies
29 or other contracts of any kind or kinds, to a broker, an
30 insurance producer, or a solicitor duly licensed under the laws
31 of this state, but such broker, insurance producer, or solicitor
32 receiving such consideration shall not pay, give, or allow credit
33 for such consideration as received in whole or in part, directly
34 or indirectly, to the insured by way of rebate.

35 (9) Requiring, as a condition precedent to loaning money upon the
36 security of a mortgage upon real property, that the owner of the
37 property to whom the money is to be loaned negotiate any policy
38 of insurance covering such real property through a particular
39 insurance producer or broker or brokers. However, this
40 subdivision shall not prevent the exercise by any lender of the
41 lender's right to approve or disapprove of the insurance company
42 selected by the borrower to underwrite the insurance.

43 (10) Entering into any contract, combination in the form of a trust
44 or otherwise, or conspiracy in restraint of commerce in the
45 business of insurance.

46 (11) Monopolizing or attempting to monopolize or combining or
47 conspiring with any other person or persons to monopolize any

part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-8-11-3.5 or IC 27-13-15-4 concerning provider reimbursement.

SECTION 16. IC 27-8-11-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3.5. (a) An agreement between an insurer and a provider under this chapter may not contain a**

1 provision that requires the provider to offer to the insurer a
 2 reimbursement rate that is equal to or lower than the lowest
 3 reimbursement rate that the provider offers to another insurer.

4 (b) A violation of this section by an insurer is an unfair or
 5 deceptive act or practice in the business of insurance under
 6 IC 27-4-1-4.

7 SECTION 17. IC 27-13-15-4 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2005]: **Sec. 4. (a) A contract between a health**
 10 **maintenance organization and a participating provider may not**
 11 **contain a provision that requires the participating provider to offer**
 12 **to the health maintenance organization a reimbursement rate that**
 13 **is equal to or lower than the lowest reimbursement rate that the**
 14 **participating provider offers to another health maintenance**
 15 **organization.**

16 (b) A violation of this section by a health maintenance
 17 organization is an unfair or deceptive act or practice in the business
 18 of insurance under IC 27-4-1-4."

19 Page 21, after line 25, begin a new paragraph and insert:

20 "SECTION 25. [EFFECTIVE JULY 1, 2005] (a) IC 27-8-11-3.5,
 21 as added by this act, applies to an agreement between an insurer
 22 and a provider that is entered into, amended, or renewed after
 23 June 30, 2005.

24 (b) IC 27-13-15-4, as added by this act, applies to a contract
 25 between a health maintenance organization and a participating
 26 provider that is entered into, amended, or renewed after June 30,
 27 2005."

28 Renumber all SECTIONS consecutively.

(Reference is to ESB 416 as printed April 1, 2005.)

Representative Brown T